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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,798

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Emmanuel Delorme

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EXAMINER

DAWSON, GLENN K

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

10/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/809,798

Applicant(s)

DELORME ET AL.

Examiner

Glenn K. Dawson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-29 is/are allowed.
- 6) ☒ Claim(s) 1-16 and 30-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08-20-2007 has been entered.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to provide antecedent basis for the body being made from a porous material.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Horn-6776161.

Horn discloses a device capable of being implanted into a body and includes a support body 1 made out of a porous biocompatible material and two anterior 2, posterior 3 and middle 4 suspension straps. See col. 2 lines 22-46 and figure 1.

Claims 1,2,5,6,13,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bullard-2199690.

Bullard discloses a device, which could be implanted into a patient, in fig. 4 having a rectangular support body 11 from which emanates 2 anterior straps13, two posterior straps 12 and two middle straps positioned between the anterior and posterior straps. Each of the pair of straps has a strap, lying on one side of a sagittal plane or axis. If one so desired, it could be used to support tissues or organs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Bullard discloses a device, which could be implanted into a patient, in fig. 4 having a rectangular support body 11 from which emanates 2 anterior straps 13, two posterior straps 12 and two middle straps positioned between the anterior and posterior straps. Each of the pair of straps has a strap, lying on one side of a sagittal plane or axis. If one so desired, it could be used to support tissues or organs.

Claims 1-16 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bullard-'690 in view of Horn-6776161.

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Bullard discloses a device, which could be implanted into a patient, in fig. 4 having a rectangular support body 11 from which emanates 2 anterior straps 13, two posterior straps 12 and two middle straps positioned between the anterior and posterior straps. Each of the pair of straps has a strap, lying on one side of a sagittal plane or axis. If one so desired, it could be used to support tissues or organs. Bullard discloses the invention as claimed with the exception of the material of the body and the specific lengths of the straps and the angles between the straps. Horn discloses that it was known to make the headgear material out of a porous (woven) biocompatible material. It would have been obvious to have made the headgear of Bullard out of the material disclosed by Horn, as this material is flexible, elastic and would act to adequately secure the mask on the user's face. Given that the Bullard device is for a facemask, the length of the straps exceeding 4-5 in. would have been an obvious modification in order to allow for proper tensioning of the mask around an average size head. As for the claimed angle ranges, it appears as if the angles between the pair of anterior or posterior straps are close to 90 degrees. Therefore, the examiner contends that widening the angle would have been a mere obvious design choice giving that the applicant failed to provide any criticality for these angles, failed to disclose the angles being for any particular purpose or to solve a problem, and the examiner contends that the prior art angles would have performed equally as well.

Claims 1-16 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacquetin-2006/0173237.

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Jacquetin discloses an implant in fig. 10 having a body 112, made out of a porous biocompatible material and two pairs 142, 144 of suspension straps. The device is used to treat cystocele. However, the third pair of straps is not disclosed. However it would have been a mere duplication of known parts to merely add a third pair of suspension straps to the body, as this would merely provide additional points of attachment and suspension which would provide a more secure attachment and use of the sling/support implant. See MPEP 2144 B. Duplication of Parts

In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.). No unexpected result would be obtained by adding the additional pair of suspension straps.

The examiner contends that providing the claimed angles between the straps would have been obvious noting the lack of criticality of these angles and the examiner contends that applicant's device would work equally well with the angles of the prior art.

Additionally, the examiner contends that attaching the straps to the claimed locations would have been obvious as the device is used in the same location and for the same purpose.

Claims 1-16 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliari-2004/0116774.

Migliari discloses an implant having a body 4, made out of a porous biocompatible material and two pairs 10,11 and/or 22,23,32,33 of suspension straps. The device is used to treat cystocele. However, the third pair of straps is not disclosed. However it would have been a mere duplication of known parts to merely add a third pair of suspension straps to the body, as this would merely provide additional points of attachment and suspension which would provide a more secure attachment and use of the sling/support implant. See MPEP 2144 B. Duplication of Parts

In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.). No unexpected result would be obtained by adding the additional pair of suspension straps.

The examiner contends that providing the claimed angles between the straps would have been obvious noting the lack of criticality of these angles and the examiner contends that applicant's device would work equally well with the angles of the prior art.

Additionally, the examiner contends that attaching the straps to the claimed locations would have been obvious as the device is used in the same location and for the same purpose.

Claims 2-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn-6776161.

Horn discloses the invention with the exception of the sizes or angles of the different elements of the implant.

The examiner contends that providing the claimed angles between the straps would have been obvious noting the lack of criticality of these angles and the examiner contends that applicant's device would work equally well with the angles of the prior art. Providing the claimed length of the straps would have been obvious in order to be able to attach the device in the proper location and to the appropriate anatomical structures in the disclosed surgical area.

Allowable Subject Matter

Claims 17-29 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-16 and 30-35 have been considered but are moot in view of the new ground(s) of rejection.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd E. Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Glenn K Dawson
Primary Examiner
Art Unit 3731

Gkd
19 October 2007